

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

VICTOR L. WEAVER,

Plaintiff,

v.

CHECKR INC.,

Defendant.

No. C 22-04135 WHA

ORDER DISMISSING CASE

INTRODUCTION

In this action under the Fair Credit Reporting Act, plaintiff, who appears *pro se*, alleges that defendant, a consumer reporting agency, provided an inaccurate background check to a potential employer. Plaintiff had previously raised a virtually identical suit in the United States District Court for the District of Arizona, which was dismissed after plaintiff was compelled to arbitration. Defendant now moves to dismiss this suit under the doctrine of collateral estoppel. For the reasons stated below, defendant's motion is **GRANTED**.

STATEMENT

The following facts are taken from the allegations set forth in plaintiff's complaint (Dkt. No. 1). In August 2019, plaintiff was charged in Maricopa County, Arizona, with certain state crimes related to the illegal distribution of prescription drugs. In February 2022, plaintiff represented himself in a jury trial and was acquitted of all charges. Shortly thereafter, plaintiff applied to work for food delivery service UberEats, which requested that plaintiff supply a

1 background check through defendant Checkr Inc.’s reporting service. Plaintiff alleges that
2 defendant provided an “outdated, inaccurate” report to UberEats that stated that the charges
3 against plaintiff remained pending. As a result, plaintiff was “denied the opportunity to work
4 for UberEats” (Compl. ¶¶ 6–7, 10, 20–21).

5 Plaintiff filed suit against defendant in the United States District Court for the District of
6 Arizona on June 27, 2022, raising a claim under the FCRA. *See Weaver v. Checkr Inc.*, No. C
7 22-01090 (D. Ariz. filed June 27, 2022) (Judge Susan M. Brnovich). Plaintiff then filed a
8 virtually identical suit here two weeks later. Meanwhile, defendant filed a motion to compel
9 arbitration in Arizona. Plaintiff never responded to the motion. Judge Brnovich then granted
10 the motion and dismissed the Arizona suit on September 12, 2022 (Dkt. No. 14-5).

11 Defendant now moves to dismiss our suit under the doctrine of collateral estoppel (Dkt.
12 No. 14). Plaintiff opposes, arguing, in effect, that he never actually litigated against
13 defendant’s motion in the Arizona proceeding. This order follows a round of supplemental
14 briefing and oral argument.

15 ANALYSIS

16 A party may invoke the doctrine of collateral estoppel to avoid relitigating an issue in a
17 subsequent proceeding when: “(1) the issue at stake was identical in both proceedings; (2) the
18 issue was actually litigated and decided in the prior proceedings; (3) there was a full and fair
19 opportunity to litigate the issue; and (4) the issue was necessary to decide the merits.”
20 *Snoqualmie Indian Tribe v. Washington*, 8 F.4th 853, 864 (9th Cir. 2021).

21 Here, the issue that defendant seeks to avoid relitigating — whether plaintiff should be
22 compelled to arbitrate — is identical to the issue that was at stake before Judge Brnovich. The
23 issue was also necessary to decide the merits. Further, Plaintiff admitted at oral argument that
24 he received notice of defendant’s motion when it was filed and had the opportunity to file an
25 opposition brief. He thus had a “full and fair opportunity” to litigate the issue. *See Maciel v.*
26 *Comm’r*, 489 F.3d 1018, 1023 (9th Cir. 2007). Our only concern, then, is whether the issue
27 was “actually litigated.”
28

1 Plaintiff explained at oral argument that he received notice that the Arizona case would
2 be dismissed without prejudice if defendant was not served within ninety days. He understood
3 that to mean that the case would be dismissed if he did nothing. He then decided to file in
4 California. His intent was to abandon his Arizona suit in favor of his suit here. Defendant,
5 meanwhile, appeared voluntarily in the Arizona proceeding and exercised its right to file a
6 motion to compel arbitration.

7 Plaintiff, however, never communicated his intent with the Arizona district court. Judge
8 Brnovich then decided the issue without a hearing on account of not receiving opposition
9 papers. Notably, Judge Brnovich did not merely grant the motion as unopposed, but instead
10 decided the issue on the merits (Dkt. No. 14-5).

11 These circumstances satisfy the “actually litigated” prong of the collateral estoppel test.
12 “[A]n issue is actually litigated when an issue is raised, contested, and submitted for
13 determination.” *Janjua v. Neufeld*, 933 F.3d 1061, 1066 (9th Cir. 2019). The *Janjua* decision
14 did not expressly elaborate on whether a decision on an unopposed motion qualifies as
15 “contested” for the purposes of collateral estoppel. It did, however, suggest that whether an
16 issue is “actually litigated” depends on the circumstances of the case. *Id.* at 1065 (“[W]hen
17 applying issue preclusion, we have consistently looked to the record of the prior proceeding to
18 determine whether an issue was in fact raised, contested, and submitted for determination.”).
19 In *In re Gottheiner*, for example, our court of appeals affirmed the doctrine’s application to a
20 decision made on an unopposed motion for summary judgment. *See* 703 F.2d 1136, 1140 (9th
21 Cir. 1983). Our court of appeals explained that “some types of judgments are not given
22 collateral estoppel effect because the court did not get the benefit of deciding the issue in an
23 adversarial context” but that collateral estoppel was nonetheless warranted there because the
24 losing party had “actively participated” in the litigation and accordingly “had his day in court.”
25 *Ibid.*

26 So too here. Plaintiff made the decision to initiate a lawsuit in Arizona. He had notice
27 that defendant had appeared to defend itself and had notice of the motion to compel arbitration.
28 He nonetheless kept defendant and Judge Brnovich in the dark as to his intent to proceed in

1 this district. As a result, Judge Brnovich issued an order on the merits. The complaint here is
2 virtually identical to that in Arizona. Therefore, this Court has no choice but to respect and
3 honor the Arizona judgment, where the arbitration issue was already in hand.

4 This conclusion is consistent with the Restatement (Second) of Judgments, which was
5 cited prominently in the *Janjua* decision. *See* 933 F.3d at 1066 (citing Restatement (Second)
6 of Judgments § 27, cmt. (d) (1982) (“When an issue is properly raised, by the pleadings or
7 otherwise, and is submitted for determination and is determined, the issue is actually litigated
8”). This conclusion also aligns with the basic purpose of the doctrine. *See Montana v. U.S.*,
9 440 U.S. 147, 153–54 (1979) (“To preclude parties from contesting matters that they have had
10 a full and fair opportunity to litigate protects their adversaries from the expense and vexation
11 attending multiple lawsuits, conserves judicial resources, and fosters reliance on judicial action
12 by minimizing the possibility of inconsistent decisions.”).

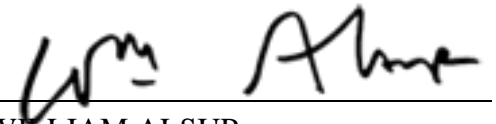
13 Plaintiff’s further arguments made at the motion hearing about prejudice and error should
14 be raised on appeal rather than through a collateral attack here. Defendant’s motion is
15 accordingly **GRANTED**.

16 CONCLUSION

17 Defendant’s motion to dismiss is **GRANTED**. Plaintiff’s motions to amend (Dkt. Nos. 19,
18 24) do not correct the deficiencies identified herein and are therefore **DENIED**. Plaintiff’s
19 motions to compel discovery (Dkt. Nos. 22, 40) and motion to reconsider (Dkt. No. 42) are
20 **DENIED AS MOOT**. This case is **DISMISSED** without leave to amend. The clerk shall close the
21 file.

22 **IT IS SO ORDERED.**

23 Dated: December 27, 2022.

24 
25 WILLIAM ALSUP
26 UNITED STATES DISTRICT JUDGE
27
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